

# Tyndall AFB Preventive Law Program Series

## Legal Assistance Series

### **DOMICILE AND LEGAL RESIDENCY**

*This handout contains basic information. If you have specific questions, come in to see a Judge Advocate for legal assistance.*



**OFFICE OF  
THE STAFF JUDGE ADVOCATE 325 FW/JA  
TYNDALL AFB, FL 32403**



## **RESIDENCE VERSUS DOMICILE**

It is important to understand the difference between *domicile* and *residence*, which are two separate legal concepts. A person is a *resident* of any place where he or she lives. Since an individual may live in more than one place, he or she may have more than one *residence*. However, a person may have only one *domicile*, or *legal residence*, at a time. An individual's domicile is essentially his or her permanent home.

The concept of *domicile* is important because it often determines important legal rights. It usually determines to which state an individual must pay income tax (although it is important to check the tax codes of each state, because some states may tax people who are only *residents*, or anyone who works in the state, regardless of residence or domicile). Domicile also affects the determination of where an individual's will is probated, liability for state inheritance taxes, the right to vote in state and local elections, the right to homestead, veteran's claims, or tax exemptions, whether community property rules apply to the division of assets in a divorce action, and bonuses for wartime service. It also may affect entitlements, such as the right to attend a state college at the "in state resident" tuition rate.

Domicile can be determined either by operation of law, or by choice. Domicile is determined by operation of law when a person is under a legal incapacity that prevents him or her from acquiring a domicile of choice. Therefore, minor children have the domicile of their parents (or of the custodial parent, if the parents are divorced or separated) regardless of where they actually reside or intend to remain. Incompetents will retain the domicile of their parents, unless they had capacity to choose their domicile before becoming incompetent. In that case, they will retain the domicile of choice that they had before becoming incompetent. A person retains his or her childhood domicile until he or she selects a new domicile by choice.

A person can acquire a domicile of choice by fulfilling two requirements: (1) physical presence, and (2) intent to remain at the new domicile indefinitely. It is not required that person intend to remain at the new domicile permanently, but intent to remain for a specified finite period is insufficient to effectuate a change of domicile. For instance, a student who moves to another state to attend college, but who plans to leave that state after four years to work elsewhere, will not have effectuated a change of domicile. Similarly, a military member who plans to spend two years at a duty assignment in a specific location, but plans to leave that state at the end of those two years and not return, will not acquire a domicile at that location. If a person has more than one permanent dwelling, courts will generally consider him or her a domiciliary of the state of his or her *primary residence*.

The reason why a person intends to remain at the new location is not relevant to the determination of domicile. It is enough that an individual has physical presence at the new location and the intent to remain there indefinitely.

### **DOMICILE OF MEMBERS OF THE ARMED FORCES**

Under the Soldiers' and Sailors' Civil Relief Act, members of the armed forces may not

involuntarily lose their domicile in the state from which they entered military service. This is important because, among other things, only the state of a member's domicile may tax the *military* income and personal property of an active duty military member. (Note that income from *off-duty employment* may still be taxed by the state you are employed in or that you reside in, regardless of your domicile). Similarly, states cannot deprive their active duty domiciliaries of their right to receive state entitlements such as in state tuition rates at state universities for themselves or their children. However, military members should be aware that this protection does not apply to spouses or adult children, who may lose their original domicile if they accompany the military member to a new location and intend to remain there indefinitely.

Both military members and their spouses can file court actions in the state where they reside due to military service, even though they are domiciled in another state

## **CHANGING DOMICILE**

Since changing your domicile is dependant upon both physical presence at the new location and your intent to remain there indefinitely, you need evidence of your intent to acquire a new domicile in order to do so in a way that will be recognized by both your new, chosen domicile and your old domicile. This is important because ineffectively changing your domicile can cause you a lot of problems. For instance, you may still owe state income tax to your original domicile if a valid change is not made. If you do not pay it because you incorrectly believe that you have acquired a new domicile, you may be billed for back taxes in one lump sum, incur hefty penalties, or even be criminally prosecuted for tax evasion. It is important to note that merely changing your state of residency on your pay records is NOT sufficient to validly change your domicile.

Taking the following actions all provide evidence of intent to acquire a new domicile:

- a. registering to vote at the new location;
- b. changing your driver's license and vehicle registration;
- c. buying real property and applying for the homestead tax exemption;
- d. changing your W-4 form;
- e. executing a new will listing the new domicile; and
- f. establishing bank accounts or other financial and/or business ties to the new location.

Since all of these actions are viewed as evidence of your intent to change your domicile, you should take as many of these actions as you can if you want to validly change your domicile. However, you must remember that in the end the question is one of intent. Therefore, if you have strong ties remaining with your previous domicile, such as maintaining your professional licensures there, it may be difficult to establish the requisite intent to abandon your old domicile

and acquire a new one.

**You are considered a Florida resident . . .**

when your true, fixed, and permanent home and principal establishment is in Florida. Filing a declaration of domicile, qualifying for homestead exemption, or registering to vote in Florida can establish residency. Other actions, such as obtaining a Florida driver's license, only indicate an intent to establish residency.<sup>1</sup>

If you have questions about domicile or residency, please feel free to make an appointment to speak to an attorney.

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<sup>1</sup> <http://sun6.dms.state.fl.us/dor/taxes/new.html>